

I-1997.267 US D2  
Cust. No. 31846  
10/798,941

#### IV. Remarks and Conclusion

##### A. Specification Objections

Sequence ID numbers have been added to the relevant pages. Applicant respectfully requests reconsideration. Applicant is replacing all paragraphs from line 3 of page 17 until the end of Example 8 on page 21.

##### B. Drawings

Applicant has added the appropriate SEO ID NO: 2 to Figure 2 and submitted a Replacement Sheet. SEO ID 2 is referred to in the Brief Description of the Figures. Accordingly, Applicant respectfully requests that the Examiner remove the objections.

##### C. §112

###### 1. 1<sup>st</sup> ¶

Claims 7-9 stand rejected under 35 USC §112, 1<sup>st</sup> ¶ as not being enabled. Applicant strongly disagrees. Applicant again directs the Examiner to page 10, last full paragraph again. There, the following is stated:

*Bacterial promoters all share two consensus regions, the so-called -10 and the -35 region.*

*Although the flanking sequence of these consensus regions may to a certain extent influence the efficiency of the promoter, it can be advantageous to use only that part of the promoter region that comprises the DNA fragment between -35 and the ATG codon."*

It does not merely say: "some bacterial promoters share ...". On the contrary ! It says: *Bacterial promoters all share two consensus regions, the so-called -10 and the -35 region*

There is no exception to this rule. The -10 and -35 region constitute the promoter region. And the fact that there is expression of the ApxIV gene proves that its promoter region is present and active. And it is clear that a nucleotide sequence comprising the DNA fragment from

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position 549 to 641 of SEQ ID NO: 5 thus comprises the promoter region.

Applicant has now cancelled Claims 7-9 and submitted anew claim 20. Claim 20 is as follows: "*A nucleotide sequence harbouring the promoter controlling the expression of the ApxIV gene, characterized in that said nucleotide sequence comprises the DNA fragment from position 594 to 641 of SEQ ID NO. 5*". The support for this amendment can be found in the legend of SEQ ID NO. 5, where the location of the -10 signal (617-623) and the -35 signal (594-599) are indicated. In light of this Claim, Applicant respectfully requests reconsideration. Further, no estoppel should result from this amendment, as the amendment was not a limitation and was already inherent from the Figure.

## 2. 2<sup>nd</sup> ¶

✓ Applicant has amended the Claim to spell out ApxIV on its first occurrence.

## D. 35 USC §101

✓ Claims 7-9 stand rejected as being drawn to non-patentable subject matter. Applicant has cancelled Claims 7-9. Newly presented Claim 20 cures the objection by adding "an isolated."

## E. 35 USC §102

Claims 7-9 stand rejected under 35 USC 102 as being anticipated by an article to Frey. The Examiner asserts that Frey discloses the promoter sequence. However, apart from the fact that the last 4 lines of page 8 of the Examiner's letter and the first 5 lines, although readable, are impossible to understand, it is fully unclear where any mention is made by Frey with regard to the ApxIV gene or its coding sequence, let alone its promoter. Therefore it is enigmatic why the Examiner assumes that Frey is novelty destroying. Accordingly, Applicant respectfully requests reconsideration.

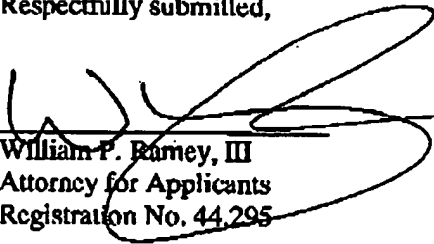
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**E. Conclusion**

Applicant respectfully asserts that the Claims are in a condition for allowance and respectfully requests such action. Applicant invites the Examiner to contact the undersigned attorney. Please charge any required fees and credit any credits to deposit account 02-2334.

Respectfully submitted,

  
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